## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:20-cv-00203-MR

WENDELL J. LE MAITRE,	)
Plaintiff,	) )
vs.	) ) ORDER
RUSSELL CHESTER, et al.,	)
Defendants.	) ) )

**THIS MATTER** is before the Court on Plaintiff's "Request to Remove Case from Docket Without Prejudice," [Doc. 48], which the Court construes as a motion to dismiss pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

Pro se Plaintiff Wendell J. Le Maitre ("Plaintiff") is a prisoner of the State of North Carolina currently incarcerated at Alexander Correctional Institution ("Alexander") in Taylorsville, North Carolina. Plaintiff filed this action on December 28, 2020, pursuant to 42 U.S.C. § 1983, alleging various constitutional violations based on events occurring. [Doc. 1]. Plaintiff's Complaint survived initial review against Defendants Chester, Dula, Lipford, Cox, and Roberts, in accordance with the Court's Order. [Doc. 10]. On September 26, 2022, Defendants moved for summary judgment. [Doc. 45].

On October 3, 2022, the Court entered a <u>Roseboro</u> Order instructing Plaintiff how to respond to Defendants' motion and setting the deadline to respond as October 17, 2022. [Doc. 47].

Plaintiff now moves the Court to dismiss Plaintiff's Complaint pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. [See Doc. 48]. Plaintiff asks the Court to remove his case from the docket without prejudice "due to the constant pressure, & continuous harassment and retaliation experiencing while at [Alexander]" due to this lawsuit and "several other tort claims" he has filed. [Id. at 1]. Plaintiff asserts that, since September 2021, he has had every piece of his property "dissolved from [his] possession" by guards at Alexander and that he has been verbally abused, called racist names, and assaulted and injured. [Id. at 2]. Plaintiff states that he is currently in segregation for false and frivolous charges of threatening and refusing direct orders and that he his refusing to leave segregation until his [ld.]. Plaintiff claims that the harassment, gets protective custody. retaliation, and physical harm continue no matter how many grievances he files or whom he complains to. [Id. at 2-3]. Plaintiff states he no longer wishes to pursue this action under these circumstances and will consider refiling it in the future "after [he is] not assigned to this Particular Facility." [ld. at 3-4].

The Court will grant Plaintiff's motion to dismiss without prejudice under these circumstances. Fed. R. Civ. P. 41(a)(2).

## **ORDER**

**IT IS THEREFORE ORDERED** that Plaintiff's motion to voluntarily dismiss his Complaint [Doc. 48] is **GRANTED** without prejudice.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment [Doc. 45] is **DENIED** as moot.

The Clerk is respectfully instructed to terminate this action.

IT IS SO ORDERED.

Signed: October 27, 2022

Martin Reidinger

Chief United States District Judge